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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,048	08/07/2003	Eghart Fischer	P03,0273	1026

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EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT PAPER NUMBER

2646

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/636,048

Applicant(s)

FISCHER ET AL.

Examiner

Phylesha L. Dabney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/24/03</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This action is in response to the application filed on 30 June 2005 in which claims 1-12 are pending.

Drawings

The drawings are objected to because paragraph [0014] states that there is another embodiment; however only one embodiment is shown, and the first embodiment drawing sheet should be labeled "Figure 1". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not teach a native signal as disclosed in claims 11-12.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to teach a native signal of a screen device.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 8, the terms “a signal” and “electrical signal” are taught as being two separate entities, where as the drawings teach that these terms have the same meaning. In

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light of this, it is not understood whether the applicant intended for the detector to receive a signal that is distinct and dissimilar to the signal received by the input device. For purposes of advancing prosecution, it is assumed that they are different.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Amended claim 8 includes all of the limitations from claim 1. It also depends from claim 7 which includes limitations from claim 1. Therefore, ^{claim 8} ~~claim 8~~ I has two of each element, such as two detectors. In light of this, it is not understood whether the applicant intended to disclose another embodiment have duplicate elements. For purposes of rejection, it is assumed that a typographical error is present.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexandrescu (U.S. Patent No. 5,909,497).

Regarding claims 1-2, 5, and 7, Alexandrescu teaches a hearing aid device (figs. 1-8) comprising: at least one input transducer (11) configured to acquire an input signal (13) and transduce it into an electrical signal (15); a detector (41) in conjunction with 53; col. 8 lines 5-18) for detecting a signal output by a screen device (col. 8 lines 5-18); a signal processing unit (5)

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configured to process and amplify the electrical signal, the signal processing unit being adaptable to different auditory situation (areans, halls, televisions, etc.; col. 8 lines 5-44) by at least one adjustable parameter (parameters; col. 8 lines 10-18) that can be automatically adjusted dependent on the signal (automatic; col. 8 lines 25-44); and an output transducer (33) to transduce the processed electrical signal into an acoustic or mechanical output signal.

Regarding claims 3-4, Alexandrescu teaches a threshold value, wherein a signal strength of the line signal can be detected and compared with the threshold value to automatically adjust the parameter upon exceeding the threshold value (col. 8 lines 5-18, where the device comprehends the concept of loud volume and adjusts the parameters).

Regarding claim 6, Alexandrescu inherently teaches an adjustment mechanism permitting adjustment of the value or the value interval (see claim 1 above).

Regarding claim 9, Alexandrescu teaches the parameter can automatically be adjusted given a detected line signal, and the parameter can be set back to its original value when the line signal can no longer be detected as further suggested in column 8.

Regarding claim 10, it teaches a method corresponding the apparatus taught in claim 1. The method is inherent in that it simply provides a methodology for the logical implementation found in claims 1-7 and 9.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexandrescu in view of Applicant's Specification.

Regarding claims 8 and 11-12, Alexandrescu teaches a hearing aid device (figs. 1-8) comprising: at least one input transducer (11) configured to acquire an input signal (13) and transduce it into an electrical signal; a detector (41 in conjunction with 53; col. 8 lines 5-18) for detecting a signal output by a screen device (col. 8 lines 5-18); a signal processing unit (5) configured to process and amplify the electrical signal, the signal processing unit being adaptable to different auditory situation (arenas, halls, televisions, etc.; col. 8 lines 5-44) by at least one adjustable parameter (parameters; col. 8 lines 10-18) that can be automatically adjusted dependent on the signal (automatic; col. 8 lines 25-44); and an output transducer (31) to transduce the processed electrical signal (33) into an acoustic or mechanical output signal, wherein the screen device is a television device and the detector is configured to detect a signal output by the television device. Alexandrescu does not teach the signal is a line signal and an automatic adjustment of the parameter ensues when the line signal frequency is 15.625 KHZ or 15.734 KHz. However, since these frequencies are well-known world standards for television devices (applicant's specification pages 2-3) and it is known to use a line signal frequency for a television, then it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement any of the known world standards for use in the device along a line signal in the invention of Alexandrescu to minimize the need for additional programming algorithms to compensate for deviation from the normal and widely accept standards.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

With respect to the applicant's arguments that "Alexandrescu fails to teach or suggest the detection of a signal output by the screen device and adaptation to a different auditory situation dependent on the signal" and the additional arguments that "Alexandrescu does not teach the detection of a signal output by the screen device, and adjustment of the hearing device that is dependent upon the signal, but rather teaches the detection of information that has been encoded into the signal, and the adjustment that takes place is dependent upon this encoded information, and not the signal itself," the examiner disagrees (see the amended rejection above). Since the applicant's claim language does not stipulate what kind of signal must be outputted from the television and used to adjust the hearing aid parameter, then the Alexandrescu reference applies.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 28, 2005


PLD


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SUPERVISORY PATENT EXAMINER